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Attorneys for Plaintiff
ARTIFEX SOFTWARE, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ARTIFEX SOFTWARE, INC.,

Plaintiff,

v.

JOHN WILEY & SONS, INC.,

Defendant.

Case No.

COMPLAINT FOR
1. COPYRIGHT INFRINGEMENT
2. BREACH OF CONTRACT
3. BREACH OF CONTRACT

DEMAND FOR JURY TRIAL

Plaintiff Artifex Software, Inc. ("Artifex") for its Complaint against Defendant John Wiley & Sons, Inc. ("Wiley") alleges and avers as follows:

INTRODUCTION

1. Artifex is the owner of MuPDF, a leading program used to interpret certain page description language files, such as Adobe Systems Incorporated's ("Adobe") Portable Document Format ("PDF") files. MuPDF is a widely used PDF interpreter and far outperforms its competitors on reliability and performance benchmarks. In addition to offering commercial licenses to MuPDF, Artifex has licensed and continues to license MuPDF to the public under conditional open source licenses—such as the GNU General Public License version 3.0 ("GNU GPL") and the GNU Affero General Public License ("GNU AGPL") (collectively, "the GPL open source licenses")—to further promote the advancement of interpreter technologies.

JURISDICTION AND VENUE

8. Artifex’s claim for copyright infringement arises under the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.* Artifex also brings a related state law claim for breach of contract.

9. This Court has original subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1338, and 1367.

10. This Court has specific personal jurisdiction over Wiley as it, through (1) its offering and distribution of its infringing products containing MuPDF through the Internet to citizens of California and (2) conducting business through its office in California and with companies in California, such as Google Inc. and Artifex—including entering into the GNU AGPL or the GNU GPL with Artifex—purposefully committed within California the acts from which these claims arise and/or committed tortious acts outside California, knowing and intending that such acts would cause injury within the state to Artifex, a California corporation. The Court also has general personal jurisdiction over Wiley as it conducts continuous, systematic, and routine business—through its office in California and through the Internet—within the state of California and within the jurisdiction of this Court, which makes Wiley essentially at home in California.

11. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(a).

INTRADISTRICT ASSIGNMENT

12. This is an Intellectual Property Action and therefore assignment to any division of the Court is proper pursuant to Civil L.R. 3-2(c). Artifex believes assignment to the San Francisco division is particularly appropriate given its proximity to the principal offices of Artifex as well as Artifex’s counsel of record.

GENERAL ALLEGATIONS

Artifex and MuPDF

13. Artifex is a closely-held, private corporation that was formed in 1993 and is headquartered in Novato, California. Artifex develops and licenses software products that interpret files written in a page description language (“PDL”).

1 14. A PDL is a computer language developed for describing the contents of a printed
2 page. A widely used example of a PDL is the Portable Document Format (“PDF”) developed by
3 Adobe Systems Incorporated (“Adobe”). PDF files generally allow for a document created on
4 one platform to be displayed and/or printed on another platform exactly as it had been on the first.
5 This is true regardless of whether the document consists of graphics, text, or both. Moreover,
6 PDF files will display text on the screen as it would be displayed on printed pages regardless of
7 the font that the text was created in and regardless of whether the displaying computer (or printer)
8 is loaded with such fonts. Fonts used in PDF files are embedded within the PDF file itself,
9 eliminating the need for both computers to install the same fonts. PDF files, moreover, are
10 generally created from the print stream generated by a program. A PDF creator will capture the
11 information from the print stream and convert it into a PDF file. One drawback of PDF files is
12 that, in general, they cannot be edited once the underlying document is encapsulated as a PDF
13 file. These are called “static” PDF files.

14 15. MuPDF is a program developed by Artifex that can interpret PDF files.

15 16. MuPDF is a widely used PDF interpreter. Artifex has earned the confidence of its
16 customers through the demonstrated reliability of its products and highly competitive results on
17 performance benchmarks. These results have been accomplished only through extensive
18 investment in research and development of the MuPDF software as well as the scrutiny of dozens
19 of external beta testers and thousands of diverse users on the Internet. Artifex has expended
20 substantial amounts of money on research and development in order to improve and update
21 MuPDF.

22 17. Artifex’s business is, in part, based on the revenues derived from Artifex’s
23 position as the exclusive commercial licensing agent of MuPDF. Artifex licenses MuPDF to the
24 public under different licensing schemes. For those seeking to commercially distribute MuPDF
25 or any product that incorporates MuPDF, Artifex will grant, for a fee, a license to use, modify,
26 copy, and/or distribute MuPDF.

27 18. For non-commercial users willing to comply with certain open-source licensing
28 requirements, Artifex currently provides licenses for MuPDF under the GNU AGPL. A true and

1 correct copy of the GNU AGPL is attached hereto as **Exhibit 1**. Before February 2013, and at
 2 least since June 2010, Artifex provided licenses for MuPDF under the GNU GPL. A true and
 3 correct copy of the GNU GPL is attached hereto as **Exhibit 2**.

4 19. Artifex does not charge a fee for licenses granted under the GPL open source
 5 licenses, which were created to promote the open-source development of software products.
 6 Towards that end, the GPL open source licenses grant the end user the right to copy, modify, or
 7 distribute complying copies of MuPDF.

8 **Wiley and Its Infringing Software**

9 20. Wiley is a New York corporation publicly traded on the New York Stock
 10 Exchange with a reported annual revenue of approximately \$1.8 billion in 2018.

11 21. On information and belief, at least as early as 2015, Wiley downloaded and used a
 12 version of Artifex's MuPDF software previously licensed to non-commercial users under the
 13 GNU GPL. In the alternative, and dependent on the exact date Wiley downloaded the version of
 14 MuPDF that Wiley used, Wiley used a version of MuPDF licensed to non-commercial users
 15 under the GNU AGPL.

16 22. Wiley subsequently incorporated Artifex's MuPDF software into at least 102 of its
 17 mobile applications (collectively, the "Wiley Apps"). Artifex is informed and believes, and based
 18 thereon alleges, that Wiley's infringing use of MuPDF is more widespread and goes beyond the
 19 102 Wiley Apps that Artifex has so far identified.

20 23. Wiley's infringing use of MuPDF in its mobile applications including, but not
 21 limited to, the 102 Wiley Apps is ongoing—Wiley has and continues to distribute versions of the
 22 Wiley Apps containing MuPDF to its customers via the Google Play marketplace. As of the date
 23 of this Complaint, 89 Wiley Apps are available for download on the Google Play Store. The 89
 24 infringing Apps still available for download are:

- 25 1) Addiction Biology
- 26 2) Addiction Journal
- 27 3) Advanced Synthesis & Catalysis
- 28 4) American Jnl of Political Sci

- 1 5) American Jnl Transplantation
- 2 6) Anatomical Sciences Education
- 3 7) Angewandte
- 4 8) ANZJPH
- 5 9) Arthritis & Rheumatology
- 6 10) Arthritis Care & Research
- 7 11) Asian J. Org. Chem.
- 8 12) BJCP
- 9 13) BJU International
- 10 14) British Education Research Jnl
- 11 15) British Jnl of Pharmacology
- 12 16) British Journal of Dermatology
- 13 17) British Journal of Haematology
- 14 18) British Journal of Management
- 15 19) British Jnl of Edu Technology
- 16 20) CA:Cancer Journ for Clinicians
- 17 21) Cancer
- 18 22) Cancer Cytopathology
- 19 23) Cancer Science App for Android
- 20 24) Chem. Asian J.
- 21 25) ChemBioChem
- 22 26) ChemCatChem
- 23 27) Chemical Eng & Technology
- 24 28) Chemistry - A European Journal
- 25 29) ChemistryOpen
- 26 30) ChemMedChem
- 27 31) ChemPhysChem
- 28 32) ChemPlusChem

- 1 33) ChemSusChem
- 2 34) Clin & Experimental Immunology
- 3 35) Clinical Liver Disease
- 4 36) Comm., Culture & Critique
- 5 37) Communication Theory
- 6 38) Cytometry Part A
- 7 39) Cytometry Part B: Clinical Cytometry
- 8 40) Dev Medicine & Child Neurology
- 9 41) Developmental Dynamics
- 10 42) Diabetic Medicine
- 11 43) ETC Journal App
- 12 44) Euro Jnl Inorganic Chemistry
- 13 45) Euro Jnl Organic Chemistry
- 14 46) European Jnl of Neuroscience
- 15 47) European Journal of Neurology
- 16 48) European Journal of Pain
- 17 49) Functional Ecology
- 18 50) Hepatology
- 19 51) Human Communication Research
- 20 52) IEAM Journal App
- 21 53) Immunology
- 22 54) Intl Jnl of Management Reviews
- 23 55) Intl Jnl of Rheumatic Disease
- 24 56) J of Computer-Mediated Comm
- 25 57) JAGS
- 26 58) JMRI
- 27 59) Jnl of Bone & Mineral Research
- 28 60) Jnl of Orthopaedic Research

- 1 61) Journal of Animal Ecology
- 2 62) Journal of Applied Ecology
- 3 63) Journal of Communication
- 4 64) Journal of Ecology
- 5 65) Journal of Management Studies
- 6 66) Journal of Neurochemistry
- 7 67) Journal of Neuroendocrinology
- 8 68) Journal of Nursing Scholarship
- 9 69) JVIM
- 10 70) L&O Methods
- 11 71) Liver Transplantation
- 12 72) Magnetic Resonance in Medicine
- 13 73) Methods in Ecology & Evolution
- 14 74) Pharmacotherapy
- 15 75) Protein Science
- 16 76) Psychophysiology
- 17 77) Quarterly Journal of the RMetS
- 18 78) STEM CELLS
- 19 79) TESOL Journal
- 20 80) TESOL Quarterly
- 21 81) The Anatomical Record
- 22 82) The FEBS Journal
- 23 83) The Journal of Finance
- 24 84) The Journal of Hospital Medicine
- 25 85) The Laryngoscope
- 26 86) TRANSFUSION
- 27 87) Veterinary Ophthalmology
- 28 88) Weather App

1 89) Worldviews on EBN

2 24. According to the App listings on the Google Play Store, 87 of the 89 Apps were
3 last updated on April 17, 2019. Of the two remaining Apps, “Weather App” was last updated on
4 October 8, 2019, and “JAGS” was last updated on January 14, 2020.

5 25. Artifex initially tried to contact Wiley regarding its unauthorized use of MuPDF
6 on or around September 11, 2017. Artifex tried to contact Wiley using the email addresses for
7 Wiley’s “Designated Agent” for the Digital Millennium Copyright Act, Wiley’s “Global Data
8 Protection Officer,” and the listed developer on the Wiley Apps’ Google Play web page. Artifex
9 continued its attempts to contact Wiley throughout 2019, but to date, Artifex has received no
10 response.

11 26. Because Wiley used and distributed MuPDF without a commercial license with
12 Artifex, Wiley has consented to the terms of the GNU AGPL or, in the alternative, the GNU GPL,
13 and is a party to that agreement with Artifex.¹ The GNU AGPL and the GNU GPL provide at
14 Section 9:

15 You are not required to accept this License in order to receive or run
16 a copy of the Program. Ancillary propagation of a covered work
17 occurring solely as a consequence of using peer-to-peer transmission
18 to receive a copy likewise does not require acceptance. However,
19 nothing other than this License grants you permission to propagate
or modify any covered work. These actions infringe copyright if you
do not accept this License. Therefore, by modifying or propagating a
covered work, you indicate your acceptance of this License to do so.

20 27. Wiley’s use of MuPDF, however, did not comply with the conditions imposed by
21 the GNU AGPL or the GNU GPL.

22 28. On information and belief, Wiley integrates MuPDF into the Wiley Apps in a way
23 that an end user interfaces with only the Wiley Apps without any option for opting out of use of
24 MuPDF or the obligations concerning MuPDF under the GNU AGPL or the GNU GPL. The end
25 user is never separately notified that MuPDF is part of the Wiley Apps. Wiley’s use and
26 incorporation of MuPDF is seamless and entirely invisible to the end user.

27
28 ¹ For purposes of this complaint, Artifex alleges alternative breaches of sections of the GNU
AGPL and the GNU GPL that are identical both in their language and numbering.

29. Because the Wiley Apps incorporate MuPDF in this way, Wiley is required to distribute its software with the accompanying source code. The GNU AGPL and the GNU GPL provide at Section 6:

You may convey a covered work in object code form under the terms of sections 4 and 5, provided that you also convey the machine-readable Corresponding Source under the terms of this License, in one of these ways:

a) Convey the object code in, or embodied in, a physical product (including a physical distribution medium), accompanied by the Corresponding Source fixed on a durable physical medium customarily used for software interchange.

b) Convey the object code in, or embodied in, a physical product (including a physical distribution medium), accompanied by a written offer, valid for at least three years and valid for as long as you offer spare parts or customer support for that product model, to give anyone who possesses the object code either (1) a copy of the Corresponding Source for all the software in the product that is covered by this License, on a durable physical medium customarily used for software interchange, for a price no more than your reasonable cost of physically performing this conveying of source, or (2) access to copy the Corresponding Source from a network server at no charge.

...

d) Convey the object code by offering access from a designated place (gratis or for a charge), and offer equivalent access to the Corresponding Source in the same way through the same place at no further charge. You need not require recipients to copy the Corresponding Source along with the object code. If the place to copy the object code is a network server, the Corresponding Source may be on a different server (operated by you or a third party) that supports equivalent copying facilities, provided you maintain clear directions next to the object code saying where to find the Corresponding Source. Regardless of what server hosts the Corresponding Source, you remain obligated to ensure that it is available for as long as needed to satisfy these requirements.

e) Convey the object code using peer-to-peer transmission, provided you inform other peers where the object code and Corresponding Source of the work are being offered to the general public at no charge under subsection 6d.

30. On information and belief, Wiley never distributed and has never distributed any of the Wiley Apps with the accompanying source code or source code offer while the software incorporated MuPDF. Wiley thus failed to comply with and breached its license to use and distribute MuPDF under the GNU AGPL or the GNU GPL.

1 31. Artifex has expended and will expend a significant amount of its own resources to
 2 enforce Wiley's contractual obligations under the GNU AGPL or the GNU GPL, including the
 3 costs incurred in filing this Complaint and the future costs associated with litigating Artifex's
 4 claims. Wiley, furthermore, has been unjustly enriched at the expense of Artifex by avoiding the
 5 payment of any license fees and distributing the Wiley Apps, which contain MuPDF in breach of
 6 the GNU AGPL or the GNU GPL.

7 32. The GNU AGPL and the GNU GPL expressly state that any use of a product
 8 licensed thereunder or a work containing or derived from that product that does not comply with
 9 their respective requirements immediately terminates the licensee's right to use that product. The
 10 GNU AGPL and the GNU GPL provide at Section 8:

11 You may not propagate or modify a covered work except as
 12 expressly provided under this License. Any attempt otherwise to
 13 propagate or modify it is void, and will automatically terminate your
 rights under this License (including any patent licenses granted under
 the third paragraph of section 11).

14 33. Wiley's failure to distribute source code along with the Wiley Apps constitutes
 15 breach of the requirements set forth in the GNU AGPL and the GNU GPL, as identified above.
 16 Wiley's right to copy or distribute MuPDF terminated upon these acts.

17 **Artifex's Copyright in MuPDF**

18 34. MuPDF contains a substantial amount of original material that is copyrightable
 19 pursuant to 17 U.S.C. §102. Artifex has complied in all respects with the Copyright Act of 1976,
 20 17 U.S.C. §§ 101 *et seq.* and all other laws governing copyright, and has obtained from the
 21 Registrar of Copyrights Certificate of Registration No. TX 6-989-229 for MuPDF version
 22 20070105. A true and correct copy of this Certificate of Registration is attached hereto as
 23 **Exhibit 3**. Artifex has obtained from the Registrar of Copyrights Certificate of Registration No.
 24 TX 8-463-904 for MuPDF version 20120906. A true and correct copy of this Certificate of
 25 Registration is attached hereto as **Exhibit 4**. Artifex has obtained from the Registrar of
 26 Copyrights Certificate of Registration No. TX 8-473-187 for MuPDF version 0.5. A true and
 27 correct copy of this Certificate of Registration is attached hereto as **Exhibit 5**. Artifex has
 28 obtained from the Registrar of Copyrights Certificate of Registration No. TX 8-823-703 for

1 MuPDF version 20100302. A true and correct copy of this Certificate of Registration is attached
 2 hereto as **Exhibit 6**.

3 35. Artifex has placed copyright notices on all copies of MuPDF version 20070105,
 4 version 20120906, version 0.5, and version 20100302 that it has produced and licensed. Any
 5 copies of the programs published by Artifex or under Artifex's authority or license have been
 6 published in strict conformity with the provisions of the Copyright Act of 1976, 17 U.S.C. §§ 101
 7 *et seq.*, and all other laws governing copyright.

8 36. As set forth above, Wiley never entered into a commercial license agreement with
 9 Artifex for its use of MuPDF, and it failed to comply with the terms of the GNU AGPL and the
 10 GNU GPL such that Wiley used and distributed MuPDF without authorization under the GNU
 11 AGPL or the GNU GPL, or any other agreement. Wiley, therefore, copied and distributed
 12 MuPDF without the authorization of Artifex. Such activity constitutes infringement of Artifex's
 13 copyright in MuPDF as well as a substantial, irreparable harm upon Artifex.

14 **FIRST CLAIM FOR RELIEF**

15 **COPYRIGHT INFRINGEMENT**

16 **(17 U.S.C. § 101 *et seq.*)**

17 37. Artifex realleges and incorporates by reference each and every allegation set forth
 18 in paragraphs 1-36, inclusive.

19 38. Before initiating this action, Artifex registered version 20070105 of MuPDF with
 20 the United States Copyright Office on October 27, 2009, under Registration No. TX 6-989-229.

21 39. Before initiating this action, Artifex registered version 20120906 of MuPDF with
 22 the United States Copyright Office on January 22, 2018, under Registration No. TX 8-463-904.

23 40. Before initiating this action, Artifex registered version 0.5 of MuPDF with the
 24 United States Copyright Office on February 1, 2018, under Registration No. TX 8-473-187.

25 41. Before initiating this action, Artifex registered version 20100302 of MuPDF with
 26 the United States Copyright Office on January 10, 2020, under Registration No. TX 8-823-703.

27 42. Through the actions complained of herein, Wiley has infringed and will continue
 28 to infringe Artifex's copyright in and relating to any version of MuPDF that Wiley used,

1 including version 20070105, version 20120906, version 0.5, version 20100302, or derivative
2 works thereof, by producing, distributing, and placing upon the market the Wiley Apps, or
3 portions thereof which were copied from Artifex's copyrighted software.

4 43. During all relevant time periods, Wiley has lacked any valid license to shield its
5 infringing conduct.

6 44. Artifex is entitled to an injunction restraining Wiley, its officers, agents,
7 employees, assigns and all persons acting in concert with them from engaging in further such acts
8 of reproduction or distribution in violation of federal copyright law.

9 45. Artifex is entitled to recover from Wiley the damages Artifex has sustained and
10 will sustain as a result of Wiley's wrongful acts as alleged herein. Artifex is further entitled to
11 recover from Wiley the gains, profits, and advantages Wiley has obtained as a result of its
12 wrongful acts. The full extent of Artifex's damages and the gains, profits, and advantages Wiley
13 has obtained by reason of its aforesaid acts of copyright infringement cannot be determined at this
14 time, but will be proven at trial.

15 **SECOND CLAIM FOR RELIEF**

16 **BREACH OF CONTRACT**

17 **(GNU Affero General Public License)**

18 46. Artifex realleges and incorporates by reference each and every allegation set forth
19 in paragraphs 1-45, inclusive.

20 47. Artifex has performed each of the conditions, covenants, and obligations imposed
21 on it by the terms of the GNU AGPL with Wiley.

22 48. Artifex granted Wiley a license to copy and distribute MuPDF under the GNU
23 AGPL. By Wiley's actions as set forth hereinabove, on information and belief, Wiley has
24 substantially and materially breached the GNU AGPL at least by failing to provide the source
25 code of the Wiley Apps to each licensee or a written offer to provide a copy of the source code
26 upon the request of each licensee.

1 restitution from Wiley any unjust enrichment, including any gains, profits, and advantages that
 2 Wiley has obtained as a result of its breach of the GNU GPL. The amount of such unjust
 3 enrichment cannot be determined at this time.

4 **PRAYER FOR RELIEF**

5 Artifex prays for judgment against Wiley as follows:

- 6 1. For permanent injunctive relief, including an order restraining and enjoining Wiley
 7 from further infringement of Artifex's copyright, specifically:
 - 8 a. that Wiley, as well as any successor entities, its directors and officers,
 9 agents, servants, employees, assigns, and all other persons acting in active
 10 concert or privity or in participation with them, and each of them, be
 11 enjoined from continuing to market, offer, sell, dispose of, license, lease,
 12 transfer, display, advertise, reproduce, develop or manufacture any version
 13 of MuPDF and any works derived or copied from any such version of
 14 MuPDF or to participate or assist in any such activity;
 - 15 b. that Wiley, as well as any successor entities, its directors and officers,
 16 agents, servants, employees, assigns, and all other persons acting in active
 17 concert or privity or in participation with them, be enjoined from directly
 18 or indirectly infringing Artifex's copyright in MuPDF;
 - 19 c. that Wiley, as well as any successor entities, its directors and officers,
 20 agents, servants, employees, assigns, and all other persons acting in active
 21 concert or privity or in participation with them, be enjoined to return to
 22 Artifex any originals, copies, facsimiles, or duplicates of any version of
 23 MuPDF or any works derived or copied from MuPDF in their possession,
 24 custody, or control that are shown by the evidence to infringe any Artifex
 25 copyright;
 - 26 d. that Wiley be enjoined to recall from all distributors, wholesalers, dealers,
 27 retailers, non-Artifex-licensed customers and distributors, and all others
 28

known to Wiley any originals, copies, facsimiles, or duplicates of any works shown by the evidence to infringe any Artifex copyright;

e. that Wiley be enjoined to deliver upon oath, to be impounded during the pendency of this action, and for destruction pursuant to judgment herein, all originals, copies, facsimiles, or duplicates of any version of MuPDF or any works derived or copied from any such version of MuPDF in its possession, custody, or control that are shown by the evidence to infringe any Artifex copyright;

f. that Wiley distribute to each licensee of the Wiley Apps the complete corresponding source code for the products in accordance with the GNU AGPL or the GNU GPL;

2. For compensatory damages against Wiley, including any consequential damages, in an amount to be determined at trial;
3. For statutory damages against Wiley in an amount to be determined at trial;
4. For an accounting of all gains, profits, and advantages derived by Wiley from its infringement and for its other violations of law;
5. For all profits and advantages derived by Wiley from its infringement and for its other violations of law to be deemed to be in constructive trust for the benefit of Artifex;
6. For restitution, unjust enrichment, and compensatory damages according to proof at trial;
7. For attorneys' fees and costs of suit incurred herein; and
8. That the Court grant such other, further, and different relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

Artifex demands a jury trial on all issues so triable.

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1 Dated: January 29, 2020

2 DARIN W. SNYDER
3 ASHISH SUDHAKARAN
4 O'MELVENY & MYERS LLP

5 By: /s/ Darin W. Snyder
6 Darin W. Snyder

7 Attorneys for Plaintiff
8 Artifex Software, Inc.
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